

EXHIBIT 2

1 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 3
2 - - - - - X
JEFFREY SIMPSON, individually and derivatively,
3 as managing member of JJ ARCH LLC, suing
derivatively as managing member of ARCH REAL
4 ESTATE HOLDINGS LLC and JJ ARCH LLC,

5 Plaintiff,

6 - against - INDEX NO.
158055/23

7 JARED CHASSEN and FIRST REPUBLIC BANK,

8 Defendants.
- - - - - X
9 JARED CHASSEN, individually and derivatively,
as managing member of JJ ARCH LLC, suing
10 derivatively as managing member of ARCH REAL
ESTATE HOLDINGS LLC and JJ ARCH LLC
11
Counterclaim-Plaintiff
12
- against -
13
JEFFREY SIMPSON and YJ SIMCO LLC,
14
Counterclaim-Defendants,
15 and

16 JJ ARCH LLC and ARCH REAL ESTATE HOLDINGS LLC
- - - - - X
17 608941 NJ INC.,
Plaintiff,
18
- against -
19
JEFFREY SIMPSON, JJ ARCH LLC and ARCH REAL
20 ESTATE HOLDINGS LLC,

21 Defendants,

22 and

23 ARCH REAL ESTATE HOLDINGS LLC,

24 Nominal Defendant.
- - - - - X
25

Appearances

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60 Centre Street
New York, New York
February 2, 2024

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PROCEEDINGS

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BEFORE:

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HONORABLE JOEL M. COHEN,

Justice

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APPEARANCES:

9

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*** APPEARANCES CONTINUING ***

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Appearances

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Appearing Microsoft Teams
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Also Present:
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BY: JEFFREY MILLER, ESQ.

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Bonnie Piccirillo
Official Court Reporter

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Proceedings

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09:35:23

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THE COURT: Good morning, everyone. We have a lot to accomplish in a relatively compressed time. I'm going to be more strict than I normally in on time because we have to deal with two motions in this case, and I have hearings back to back for the rest of the day.

So, for each motion I'm going to go with twenty minutes a side, and then we'll move from there.

So, before we get started, let's do appearances beginning with the plaintiff.

MR. ALTMAN: Good morning, your Honor. Steven Altman for the plaintiff, Jeffrey Simpson.

MR. SCHWARTZ: Good morning, your Honor. Allen Schwartz on behalf of Jared Chassen.

MS. THORNE: Leslie Thorne and Aishlinn Bottini for 608941 NJ, Inc., also referred to as Oak.

MR. ZERYKIER: And Aaron Zerykier for Arch Real Estate Holdings online.

THE COURT: Your affiliation?

MR. ZERYKIER: I'm with Polsinelli PC.

MR. MEISTER: Good morning, your Honor. Stephen Meister, remotely, Meister Seelig for Oak, as well.

THE COURT: And we have another counselor in the courtroom.

MR. MILLER: Good morning, your Honor. My name is Bonnie Piccirillo - Official Court Reporter

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1 Jeffrey Miller from Westerman Ball. I sent a letter into
2 the Court yesterday. I represent --

3 THE COURT: Can you come a little closer so the
4 court reporter can hear you.

5 MR. MILLER: Sure. I represent Adam Peldman and
6 Jonathan Peldman who are the largest investors in one
7 property that's being cut up in the dispute.

8 THE COURT: I've seen the letter, and I understand
9 where it fits in; but at this point, your client hasn't
09:37:30 10 intervened or sued anybody, so it's relevant -- I mean,
11 it's good context for me to have while these two folks fight
12 with each other. It is good for all of us to remember that
13 their conflicts may affect third parties who if they haven't
14 already done so, could be lobbying claims at them, as well.

15 I, certainly, understand that and I, certainly,
16 hope that the two gentlemen at the center of this understand
17 that as well.

18 MR. MILLER: I appreciate that, and we will move to
19 intervene if necessary.

09:38:07 20 THE COURT: I don't know that it will be an
21 intervention in this case as opposed to a separate one.
22 This case doesn't need more complexity.

23 MR. MILLER: I know. I understand. We're just
24 here to protect the rights of my client and to be heard so
25 nothing happened today that would adversely prejudice them.

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1 THE COURT: Well, it might. Not intentionally, but
2 you can't protect the rights of your client unless you
3 are -- you have a stake in the litigation and you enter an
4 appearance; but I'm not suggesting I'm going to ignore the
5 fact that one of the many entities that's at issue in this
6 fight today involves real human beings who are at the wrong
7 end of the stick.

8 So, I certainly understand it, but you should not
9 feel like the only recourse you have is to write letters
09:39:09 10 from the side in this case. If your client has claims it
11 thinks it needs to assert to have a judge really taking it
12 more specifically into account, then you know how to do
13 that.

14 MR. MILLER: I understand. We plan to do that. We
15 got retained and wanted to send a letter because we knew a
16 TRO hearing was happening. We will be doing that.

17 THE COURT: I think it was probably a smart move,
18 but nobody suggested I shouldn't read it so I did. It's a
19 good reminder to everyone that these -- keeping the damage
09:39:49 20 to these two combatants or three, perhaps, is not realistic
21 and that there are other investors here. I've heard from
22 other investors from time to time, so I do appreciate the
23 letter, but as I said, and I -- just in dealing between
24 these two parties who also have a stake in the same
25 property, I guess, the interests of that property are going

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1 to be part of the discussion today. But I wouldn't count on
2 the sort of non-appearing non-party, non-intervenor status
3 as I can't really give any relief to your clients directly.
4 I can only give relief to the parties in front of me.

5 MR. MILLER: I appreciate that.

6 THE COURT: But I appreciate the letter.

7 All right, anyone else that I haven't had
8 appearance from on the line? I just ask the folks on the
9 line to remain on mute unless and until you're ready to
10 speak so we can keep the background noise to a minimum.

09:40:56

11 So, again, as I say, twenty minutes a side.

12 The first motion -- we'll take in the order they
13 were filed -- is an order to show cause with a TRO filed by
14 Mr. Chassen. So, the main agenda item on that one is there
15 is a request for a TRO relief, relief pending the
16 preliminary injunction hearing.

17 So, with most orders to show cause, the main agenda
18 items are setting the schedule for a hearing on the broader
19 request for a preliminary injunction relief in this case, an
20 appointment of a receiver; but, substantively, my focus
21 today is on the TRO.

09:41:50

22 MR. SCHWARTZ: Yes, your Honor.

23 THE COURT: And I have read all the stuff.

24 MR. SCHWARTZ: Thank you, your Honor.

25 Good morning, your Honor. So, as your Honor just

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1 noted, we are here today seeking a temporary restraining
2 order in connection with the motion for a preliminary
3 injunction and the appointment of a temporary receiver. If
4 the temporary receiver is appointed, some of the injunctive
5 relief -- the preliminary injunctive relief that we're
6 requesting would be no longer potentially necessary if the
7 receiver were put in place.

8 Your Honor, with respect to the request for the
9 temporary restraining order, Mr. Chassen seeks an injunction
09:42:58 10 to bar Mr. Simpson from transferring JJ Arch's assets, from
11 encumbering JJ Arch's assets, from taking distributions for
12 himself from JJ Arch's assets until this motion can be
13 heard.

14 It also seeks access to JJ Arch's bank accounts,
15 which Mr. Simpson despite this Court's orders has not given
16 Mr. Chassen full access to and also full access to the books
17 and records of businesses that Mr. Chassen has still
18 deprived -- Mr. Simpson has deprived Mr. Chassen of viewing.

19 As your Honor knows, the standard is for an
09:43:38 20 injunction is likely of the success, irreparable injury,
21 balancing of the equities; but for a TRO the linchpin under
22 CPLR 6313 is the threat of irreparable injury before the
23 Court can hear the motion on the merits. And here, your
24 Honor, Chassen has established each of these elements.

25 First, your Honor, Mr. Chassen has demonstrated

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1 that Mr. Simpson is actively attempting to take JJ Arch's
2 assets because for one thing, Mr. Simpson has touted this.
3 He has told Mr. Chassen that "I have the full and exclusive
4 right to issue capital calls, and you owe 1.2 million so I
5 can take whatever cash I need without your consent."

6 That e-mail is available at NYSCEF number 492.

7 In his affidavit that he submitted just a couple of
8 days ago -- it's at NYSCEF 527 at paragraph 30 -- he tells
9 the Court, "I would like to and intend to sell the 225 Head
10 of Pond Road property to, quote, alleviate a 1.2 million
11 member loan that Chassen owes me."

12 He's actively selling company assets, your Honor,
13 on his personal Facebook page, including a vehicle, an
14 antique vehicle that under a contract Mr. Chassen, he is
15 obligated to convey to Mr. Chassen.

16 THE COURT: I do object to something being called
17 an antique that was sold in the year I was in law school,
18 but go ahead.

19 MR. SCHWARTZ: We've submitted evidence, your
20 Honor, that he has already taken thousands of dollars.
21 That's evidence at NYSCEF 493 and 510.

22 And he's been paying his own personal legal bills
23 from JJ Arch money funds without posting the undertaking
24 required by Section 10.3 of the JJ Arch Operating Agreement,
25 which requires undertaking be posted to the company in the

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1 event that Mr. Simpson is found to have acted with gross
2 negligence or --

3 THE COURT: Do you have evidence that they're using
4 JJ Arch money to pay counsel because they deny that?

5 MR. SCHWARTZ: We have NYSCEF number 518. We have
6 evidence of wire transfers going out to the Mr. Simpson's
7 counsel.

8 THE COURT: From Arch accounts?

9 MR. SCHWARTZ: Yes, at NYSCEF number 518.

09:46:16 10 THE COURT: Well, you make the point that if they
11 are Arch's counsel, they can be paid by Arch. I think the
12 point you make in your motion is he shouldn't be able to pay
13 his personal counsel.

14 So putting aside the subsidiary request you have
15 for disqualification, if assuming Mr. Altman is
16 simultaneously representing Mr. Simpson personally and also
17 JJ Arch and assuming both of those representations are
18 appropriate, wouldn't it be fine for JJ Arch to pay the JJ
19 Arch part as long as Mr. Simpson is paying the Mr. Simpson
09:47:01 20 part?

21 MR. SCHWARTZ: If that were in fact happening, your
22 Honor and that was actually being allocated in any
23 verifiable way potentially that might be appropriate, but
24 what isn't appropriate is to transfer in this case that
25 we -- the evidence that we've submitted at 518, payments to

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1 Mr. Israel who is representing -- purported to represent
2 both Mr. Simpson and JJ Arch and post no undertaking
3 whatsoever and, basically, getting payment directly from the
4 company for that.

5 So, going on to other -- this is not --

6 THE COURT: And, I assume, most of the basis for
7 your -- the most significant relief you're seeking is to
8 basically stop asset sales?

9 MR. SCHWARTZ: Correct, your Honor.

09:48:00 10 THE COURT: And, I assume, that's based on your
11 client's consent rights under the Operating Agreement?

12 MR. SCHWARTZ: It's based on the consent rights
13 under the Operating Agreement in part; but it's also based
14 on an August 1, 2023, contract that Mr. Simpson and
15 Mr. Chassen entered into that is the subject of some of
16 Mr. Chassen's counterclaims in this case, which Mr. Chassen
17 seeks specific performance and under which certain assets
18 were to be conveyed. There's going to be a division of some
19 of the assets, and I would like to actually --

09:48:37 20 THE COURT: Well, I will tell you, look, that's
21 kind a new one. I thought I had heard everything going on
22 in this case and that contract, I don't know that I fully
23 had gotten briefed on before; but that one there's disputes
24 about, right? Whether it was ever finalized, whether it's
25 applicable. There is no dispute about the Operating

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1 Agreement part, which, you know, again, your motion covers a
2 lot of territory and I'm trying to just take it piece by
3 piece.

4 The largest piece, at least in terms of
5 significance and also in terms of third-party investors, is
6 the JJ Arch business piece; and that one, I assume, the
7 dispute is you're claiming, well, look, under the agreement
8 we have consent rights as to a bunch of things that are
9 called major decisions, which is extremely broadly defined.

09:49:40 10 They say, Well, you lost those because -- your client lost
11 those and really isn't part of JJ Arch anymore because of
12 various defaults, which have also not been adjudicated;
13 right?

14 MR. SCHWARTZ: Yes, your Honor, but in terms of
15 talking about probability of success on the merits with
16 these claims, I think it is important that I address each of
17 these claims because I think if I explain -- if I could
18 explain to the Court what this member loan purports to say
19 and how it is -- and the ways in which it is, frankly, a
09:50:18 20 pretext to loot company assets.

21 THE COURT: By "member loan" you're talking about
22 their argument for why Mr. Chassen is basically out?

23 MR. SCHWARTZ: Correct.

24 THE COURT: Because he was some sort of a capital
25 call or a deficiency in the capital accounts, one or both of

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1 those things; and that's their pathway to saying, Well,
2 whatever rights you might have had as a JJ Arch member, Mr.
3 Chassen, those are over because of those issues?

4 MR. SCHWARTZ: Correct, and so I think it is
5 important that I walk the Court through all that. That
6 capital -- that purported capital call we labeled -- well,
7 we've labeled the fraudulent capital call in our amended
8 complaint where we seek to declare it null and void and
9 ultra vires and where -- it is important to note that
09:51:14 10 capital call was issued on August 31st, the day before
11 Mr. Simpson did his second purported termination of
12 Mr. Chassen.

13 I think the capital call and the contract are
14 intertwined, so if I can just quickly or as quickly as I can
15 address both those things to the court.

16 THE COURT: Slowly, but still quickly.

17 MR. SCHWARTZ: Thank you, your Honor.

18 Your Honor, in the August 1st, 2023, contract,
19 which is at NYSCEF number 509, Simpson and Chassen agreed
09:51:42 20 that Chassen would be bought out of the Rever Motors
21 business for \$675,938.35, and Chassen would own the other
22 assets 50/50 with a company called YJ Simco that was owned
23 by Mr. Simpson and his wife, with Chassen entitled to
24 co-manage the real property known as 225 Head of Pond,
25 Watermill, New York.

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1 THE COURT: Head of Pound?

2 MR. SCHWARTZ: Head of Pond.

3 THE COURT: And this is the August 1 Agreement?

4 MR. SCHWARTZ: This is the August 1 Agreement,
5 correct, your Honor, and that property is owned by this
6 entity 225 HPR LLC.

7 Chassen under the contract was also to receive
8 three antique vehicles that he paid for to Rever Motors that
9 were listed on Schedule A of the Agreement, and the initial
09:52:33 10 payment to Chassen that Simpson was to make \$500,000 was to
11 be made from a loan through Connect One Bank that Simpson
12 was to obtain in the amount of \$995,000 and that Chassen was
13 to guarantee half of with Simpson responsible for making
14 payments on the loan.

15 Exhibit B of that contract, your Honor, at NYSCEF
16 509, provides a breakdown for how Simpson and Chassen
17 reached the amount of \$675,000 -- \$675,938.35. The
18 calculation there, your Honor, shows the actual buyout was
19 \$1,186,329.84.

09:53:20 20 It then broke down further and added a repayment of
21 a loan that -- to Simpson by Chassen of \$50,000; and then it
22 deducted Simpson's repayment of half of a personal line of
23 credit they had jointly taken out, as well as agreed upon
24 balances of payments for purposes of this personal contract
25 for the entity 550 JJ NY LLC, 225 HPR LLC and another

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1 property called 80H Schwenks, S-C-H-W-E-N-K-S.

2 Exhibit B of the contract, your Honor, also
3 incorporated that they had already split 50/50 of the
4 proceeds of a sale of that 80H Schwenks property in 2023.

5 Just after entering this August 1st contract,
6 Mr. Simpson, he repudiated it by refusing to close the loan
7 with Connect One Bank that had already been approved on
8 July 27, 2023, before the contract was entered.

9 This is shown in NYSCEF 517. The e-mails attached
09:54:30 10 that are in NYSCEF 517 from the bank, the bank tells both
11 Chassen and Simpson --

12 THE COURT: What was going to be the borrower
13 entity in the loan?

14 MR. SCHWARTZ: Simpson.

15 THE COURT: Simpson personally?

16 MR. SCHWARTZ: And Chassen was going to guaranty
17 half.

18 THE COURT: Right, and the bank wanted proof of
19 liquidity for both individuals?

09:54:49 20 MR. SCHWARTZ: And proof of liquidity had been
21 provided, your Honor, because the loan was approved before
22 they entered the contract. So, this is not a situation --

23 THE COURT: Did your client have the liquidity that
24 was required?

25 MR. SCHWARTZ: Yes, he did, your Honor.

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1 THE COURT: Despite -- I mean, I've seen some
2 e-mails back and forth to suggest otherwise.

3 MR. SCHWARTZ: He had it and got approved. He had
4 liquidity and he was approved for the loan. Mr. Simpson's
5 claim he didn't have the liquidity are based on his
6 statements that Mr. Chassen made to Mr. Simpson, that
7 Mr. Chassen did not want Mr. Simpson to know what he did or
8 didn't have. He had the funds to be able to get the loan --

9 THE COURT: In the e-mail that they put in their
09:55:30 10 papers as not genuine?

11 MR. SCHWARTZ: The e-mail from Chassen to Simpson?

12 THE COURT: Saying he had \$25,000 in the bank.

13 MR. SCHWARTZ: It is a genuine e-mail. Doesn't
14 mean that the truth of the statement in the e-mail -- what
15 he was telling Mr. Simpson was true. He did not want
16 Mr. Simpson to know -- I mean, this is not in the record,
17 your Honor, but he -- and we'll be happy to respond to this,
18 but he did not want Mr. Simpson to know his, like, the state
19 of his finance at that time.

09:55:59 20 THE COURT: Did he want the lender to know?

21 MR. SCHWARTZ: He got approved. He gave the lender
22 his full information. That will all be backed up. The
23 lender approved the loan based on the information he
24 submitted. And it is important to know, your Honor, this
25 loan was approved before they entered the contract, so it

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1 wasn't as if this was an open issue.

2 THE COURT: So, what happened? Why did this break
3 down?

4 MR. SCHWARTZ: So, what happened, your Honor, is
5 that as -- if you scroll through the e-mails in NYSCEF
6 number 517, the bank then tells Mr. Simpson and Mr. Chassen
7 they had accidentally failed to include a provision that had
8 been in their previous loan, that they had accidentally
9 failed to include it and that they wanted them to resign the
10 documents with that provision. That provision was provision
11 saying they couldn't take other unsecured lines of credit;
12 and in the prior loan they had taken out a personal line of
13 credit that they had taken out previously, that provision
14 was there so the bank asked them to resign.

15 THE COURT: Well, that could be a material change,
16 right? Because if you're operating lots of other
17 businesses, promising not to take any other lines of credit,
18 that's not an insignificant difference; is it?

19 MR. SCHWARTZ: But it was the exact same provision
20 that was in their prior loan, your Honor.

21 THE COURT: May be true, but for this contract, it
22 wasn't in the loan papers for this contract, right,
23 originally?

24 MR. SCHWARTZ: It wasn't in the loan papers that
25 the bank had sent. Your Honor, Mr. Simpson's reasons for

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1 refusing to close the loan are abundantly clear.

2 If your Honor looks at NYSCEF 581, a back and forth
3 between Simpson and Chassen talking about his -- how upset
4 he was about Oak's proposal that Mr. Chassen take over
5 JJ Arch. As we've submitted in our papers, we've attached
6 the e-mails showing the back and forth where Mr. Simpson
7 reaches out to Oak, which suggests Oak should take over
8 JJ Arch in exchange for various benefits to Mr. Simpson; and
9 then Oak responds that they would rather have Mr. Chassen be
09:58:13 10 placed in charge and Mr. Simpson leave the company.

11 And after that, those e-mails which in July
12 Mr. Simpson goes if you see it -- you could see in the
13 e-mails Mr. Simpson's back and forth as he struggles to how
14 he accept that or how he's going to deal with that and his
15 emotional turmoil I guess is the best way to state it.

16 These e-mails at NYSCEF 581 show that the real
17 reason was that he was upset about, about all of that.

18 He writes to him on August 3rd, which is when he
19 was supposed to close, he says: Quote, "Interesting how you
09:58:55 20 demand 500K per year when the value you have brought has
21 crashed down like a deck of cards with an insolvent partner.
22 They put you in a proposed agreements that makes you a MM
23 --" a managing member -- "of a situation I would never
24 approve, nor are you capable. There are implications to you
25 for taking these positions against me in JJ. You are not in

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1 control and going against me has ramifications. You have
2 swallowed your own words, just like Michael. No, I don't
3 trust you and it isn't repairable any time soon. For that,
4 I do not feel sympathy for your cash position, and I am not
5 putting myself in further debt for your inabilities at RM.
6 The day you stepped aside, it has done better since the day
7 we started it."

8 "All bets are off. No buyout apart from Rever. No
9 distributions at Schwenks that is 50/50. Your cars will be
09:59:58 10 delivered to your house. I don't want to see those things
11 ever again," et cetera, et cetera.

12 He goes on to say "This is despicable how you take
13 advantage of me. It is over. I'll be much happier in life
14 not being around you."

15 So, your Honor, it is pretty clear the reason
16 Mr. Simpson refused to close on this August 1st contract
17 based on this August 3rd e-mail had to do with the events
18 surrounding Oak's proposal and Oak's -- and Oak's desire to
19 have -- that Mr. Simpson would leave the company and how
10:00:32 20 infuriated he was at Mr. Chassen about that proposal.

21 THE COURT: I mean, putting aside the merits of it,
22 that is a pretty significant change in the landscape; isn't
23 it? I mean, the obvious one contract which at least it
24 sounds like the understanding at that time was Simpson would
25 continue to run JJ Arch and this was, you know, a division

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1 of certain other assets. And then when we next look at it,
2 you say everything is the same except Simpson is out.
3 That's kind of a --

4 MR. SCHWARTZ: Simpson wasn't out at that point,
5 your Honor, and the proposal from Oak was made in July. If
6 your Honor looks further in the e-mails back in the e-mail
7 chains, you see an e-mail from Mr. Simon July 25th, 2023,
8 talk saying that when Michael sent you the, quote, "puppet
9 proposal and you felt he put you in a bad spot, why did you
10:01:31 10 not chastise him over e-mail in front of me and everybody
11 else to say what the fuck are you doing? You don't need to
12 use my style," you know, et cetera, et cetera.

13 So, this is not something that happened after the
14 contract. This is stuff that happened before the contract.
15 The purpose of the contract was to figure out a way for them
16 to part ways in terms of and resolve certain disputes over
17 assets. This is not that --

18 THE COURT: All right, we're coming close to
19 twenty minutes. I want to make sure you get -- I mean, I
10:01:59 20 get the August 1 Agreement.

21 What about the rest of your relief?

22 MR. SCHWARTZ: So, your Honor, I just would like
23 the walk through, if I can, the, quote, purported member
24 loan.

25 So, Mr. Simpson purports to terminate Chassen by
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1 August 5th. That's when those events happened. And then
2 before he again terminates him on September 1, 2023, he
3 issues a retroactive capital call to JJ Arch that is
4 available at NYSCEF 519.

5 Your Honor, the capital call, basically, takes some
6 of the calculations from this contract and then -- this
7 personal contract, but then whole ignores the rest of the
8 contract's provisions. But even if the contract had never
9 existed, your Honor, the capital --

10:02:49 10 THE COURT: Which contract are we talking about?

11 MR. SCHWARTZ: August 1st contract.

12 THE COURT: The capital call is under the Operating
13 Agreement, right?

14 MR. SCHWARTZ: So, the capital call, basically,
15 takes the breakdown, Exhibit B of the contract, about what
16 was owed, allocating different amounts that had been
17 potentially contributed or not contributed to the various
18 subsidiary entities and then uses those as a -- as a basis
19 to issue a retroactive capital call to Mr. Chassen.

10:03:21 20 THE COURT: Right, I get it; but the capital call,
21 itself, is under the Operating Agreement. You're saying it
22 is based on the relative capital contributions reflected in
23 this Agreement?

24 MR. SCHWARTZ: Correct, correct, and also the
25 personal line of credit, amongst other things. I would like

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1 to walk your Honor through that.

2 First of all, your Honor, if your Honor looks at
3 the Operating Agreements for these entities, 1640 Montauk,
4 HPR LLC, JJ 550, New York LLC, they all say JJ Arch shall
5 have no obligation to make any further capital contributions
6 to these entities, okay, number one.

7 So, JJ Arch did not have any capital obligations to
8 these entities. Even more importantly, none of these
9 entities ever even issued a capital call to JJ Arch. So
10:04:09 10 even if JJ Arch did have an obligation, they never actually
11 got a capital call from any of these entities.

12 If your Honor looks at Section 4.2 of the JJ Arch
13 Operating Agreement, it says it allows him to issue a
14 capital call to meet, quote, general and administrative
15 expenses. It doesn't allow him to issue capital calls for
16 the expenses of other entities that JJ Arch had no capital
17 obligations to and who never even issued capital calls to
18 JJ Arch. It, also, doesn't authorize him to issue
19 retroactive capital calls.

10:04:41 20 The same is true with the 146 East 89th Street
21 property which we spoke with your Honor -- we discussed at
22 the beginning of the case which has other investors.
23 That -- those entities 146 East 89th Borrower 1 LLC, 146
24 East 89th Borrower 2, 146 East 89th Street Borrower 3 LLC,
25 all of those Operating Agreements under Section 3.2 of those

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1 Operating Agreements provide that JJ Arch should not have a
2 capital call obligations to those entities. They may issue
3 capital calls to the members of those entities; and if they
4 don't answer those capital calls or respond, then JJ Arch
5 would have the right to loan money to those entities.

6 Again, no capital call has ever been issued to any
7 of those entities. There's no -- there was never loans to
8 those entities.

9 So, the basis for putting -- for saying that
10:05:34 10 Mr. Simpson because of anything -- any of the other
11 businesses that he has a right to issue a retroactive
12 capital call at the JJ Arch level under any of these
13 Operating Agreements, there's no basis for that.

14 On top of it, your Honor, he also uses 500,000 that
15 comes from personal line of credit. That was a personal
16 line of credit. It wasn't a JJ Arch expense.

17 THE COURT: Okay, counsel, twenty minutes is
18 expired. I have your papers for beyond that, but we have a
19 lot to get to so I'm going to switch to Mr. Altman. I did
10:06:12 20 give you more like twenty-five minutes, so.

21 MR. ALTMAN: Good morning, your Honor. With any
22 luck, I'll be able to put it back on schedule.

23 I'll frame the issues. What you will hear a lot
24 from me today is about enforcing written agreements between
25 the parties, the two Operating Agreements. That is -- our

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1 focus on that will be the focus of presentation in both
2 cases.

3 The starting point here is the Operating Agreement
4 for JJ Arch. I, also, want to frame the issues that are on
5 the table and not. I understood from your directions that
6 the Court is not entertaining today the possibility of entry
7 of a receiver.

8 THE COURT: Correct.

9 MR. ALTMAN: So, I'm going to focus only on those
10:06:58 10 aspects that seek to impair, impede, affect Mr. Simpson's
11 operations of JJ Arch. And as to that, with respect to the
12 JJ Arch Operating Agreement, our papers I think, Judge, make
13 pretty clear and you've ruled Mr. Simpson can do just about
14 anything he wants except --

15 THE COURT: Every time you quote that order, you
16 put in bold the portion of the paragraph that says
17 "Mr. Simpson has managerial control" and then you take the
18 bolding off for the part that says that it's subject to
19 paragraph 3.2, which are very significant consent rights.

10:07:35 20 MR. ALTMAN: Without question.

21 THE COURT: Which, basically, is a major carve-out.

22 MR. ALTMAN: Let's break them apart. That's where
23 I intended to go, exactly where I intended to go.

24 So, the day-to-day operations of the company,
25 Mr. Chassen has no rights to anything.

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1 THE COURT: Subject to it being a major decision.

2 MR. ALTMAN: Subject to it being a major decision.

3 If it is not a major decision, Mr. Chassen doesn't have an
4 opportunity to anything, any money.

5 THE COURT: Most of the things in the TRO or
6 certainly a number of the larger ones are right between the
7 eyes definition of major decision.

8 MR. ALTMAN: Only two of them.

9 THE COURT: Well, they're the big ones.

10:08:17 10 MR. ALTMAN: I'll get to that. I want to take a
11 little piece at a time, right.

12 If and to the extent Mr. Chassen is complaining
13 about you paid the cellphone bill, you didn't do that; Mr.
14 Simpson is entitled to do that, clearly under the Agreement.
15 There's no objection to that. Any money that he spent with
16 respect to that is perfect and proper and authorized and
17 directed by the Operating Agreement, off the table.

18 Next, I wasn't going to jump into right away, but
19 counsel fees, easy also. I have not received and I have no
10:08:49 20 expectation of receiving any fees, not one penny from JJ
21 Arch. Haven't been paid, I make that representation to the
22 Court.

23 THE COURT: So, the wire transfer, that's not
24 accurate?

25 MR. ALTMAN: Not me. Not since I've been in it.

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1 Those were monies that were paid before to Mr. Israel and,
2 otherwise, who were at the time representing JJ Arch. Off
3 the table.

4 Next issues, the two issues that -- the two matters
5 that are, arguably, major decisions: The 1983 Porsche, I
6 think your Honor and I are similar same age. I, too, was in
7 law school 1983. First of all, it's a de minimis matter
8 because the car is being marketed for \$45,000 and maybe
9 we'll get an offer for it for \$36,000. But be that as it
10 may, if that were to be the tale wagging the dog, the sole
11 basis for Mr. Chassen's claim to that property is this
12 August 1 Agreement, which as you acknowledge has never been
13 consummated and, surely, from what I heard so far today --

14 THE COURT: Well, it was signed.

15 MR. ALTMAN: It was signed, but never consummated.

16 THE COURT: What does consummated mean in this
17 setting?

18 MR. ALTMAN: A condition precedent expressly in
19 the contract that the loan was going to be secured from
20 Connect One Bank was not achieved. The money that was
21 funding the initial payment was from that loan. The loan
22 didn't close. You've observed the reason why. This was a
23 fascinating sort of concession.

24 Mr. Schwartz represented to the Court that an
25 e-mail that we attached where Mr. Chassen said he only had

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1 25,000 and he didn't have the half million dollars, that's a
2 lie; but what he told the bank was the truth that he really
3 had the money.

4 Suffice to say that their claim for a TRO or a
5 preliminary injunction that they have -- will fail to show
6 likelihood of success on the merits of any claim based on
7 the August 1 contract, based on the testimony in the record,
8 and argument today. So, I move past that.

9 There's no question --

10:11:01 10 THE COURT: Well, again, for the TRO part, again,
11 I'm looking at -- the first part of the TRO is really about
12 selling assets of JJ Arch.

13 Next thing, part B of it was the -- hang on a
14 second. First part of the TRO was transferring, encumbering
15 assets of JJ Arch towards control entities. That's the
16 first thing we talked about. That's the consent rights
17 issue.

18 The next one is transferring or encumbering or
19 disposing of assets that were purportedly conveyed to
10:11:42 20 Chassen under this August 1 Agreement.

21 I agree with you there that it's a different
22 question, it's a different agreement.

23 A TRO is not as much about likelihood of success on
24 the merits as a PI. You have to look at the merits and make
25 sure there's some rationale for it; but it's mostly about,

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1 you know, please put a hold on this for a week or two until
2 we can have our PI hearing because it's irreparable harm.

3 So, I questioned also what's the irreparable harm
4 under this part? The only thing I could find is there's a
5 case or two that says vintage vehicles are unique assets
6 under some provision of the CPLR and, you know, it's like
7 sewing the Hope diamond or something where money won't
8 really do it. That's the argument.

9 I don't even know if that is really even played out
10 very well; but if there's any argument for these August 1
11 assets, most of that is just a financial thing. If they win
12 on the contract, they get money back. There's one asset,
13 1983 antique Porsche. Is that a unique asset that we have
14 to stop the sale of right now?

15 MR. ALTMAN: I agree. I don't think I need to say
16 more.

17 THE COURT: Well, you do because there is a case
18 saying that a 1967 Ferrari is.

19 MR. ALTMAN: 1967 Ferrari is not 1983 Porsche. We
10:13:28 20 can go out and buy 15 1983 Porsches today with a hundred
21 thousand miles on it, not a 1967 Ferrari. That's a whole
22 other story, not a car that I could buy for \$36,000. I'm
23 not going to spend more of my time on that issue.

24 THE COURT: Fine.

25 MR. ALTMAN: If that's okay with the Court.

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1 THE COURT: But the one that most -- I was most
2 focused on because it also affects all these third parties
3 is the 2A, which is can we put a hold on asset dispositions
4 until we figure out the receivership question, which are
5 asset dispositions that would -- I would say -- under the
6 Agreement seem to require consent unless Mr. Chassen has de
7 facto no longer has those rights.

8 MR. ALTMAN: So, as usual, Judge, spot on and right
9 on top of all the issues exactly as they are. We say in our
10:14:34 10 papers, I think fairly clearly as I could express it in
11 writing. We say that Mr. Chassen doesn't have any rights in
12 JJ Arch anymore.

13 THE COURT: None of that has been decided. You
14 have an argument that based on a lot of undecided issues at
15 this point, that you will, ultimately, prevail in showing
16 for yet another reason Mr. Chassen should have been kicked
17 out of this membership a long time ago; but that is not
18 something I'm going to be -- look, let me take a step back.

19 I think your papers make allegations that are, to
10:15:21 20 my mind, nonfrivolous about things that happened, some of
21 which I haven't heard of before and that will have to be
22 litigated between the two gentlemen. They're not done.

23 My inclination, candidly, is to until I see and
24 there's some adjudication of Mr. Chassen forfeiting those
25 rights, I'm going to stick with the contract in place as you

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1 started out by saying and the fight between them will go on.
2 But until that happens, my inclination, anyway, is to adhere
3 to the contract which I've done consistently with one
4 exception.

5 MR. ALTMAN: That would please us and that's a
6 serious one, but we'll talk about later.

7 THE COURT: The AREH is a different case.

8 MR. ALTMAN: But, here, precisely to that point --

9 I suppose I should put it in the argument to be sure --

10:16:23 10 there's no question contrary to what counsel's argument that
11 Mr. Simpson has rights to issue the capital calls that he
12 did. Counsel misquoted Section 4.2(a) -- excuse me -- (b)
13 of the JJ Arch Operating Agreement.

14 Section 4.2(b), Sub (ii), makes clear that Mr.
15 Simpson's can determine that the company is required to make
16 a capital contribution to an initial capital investment,
17 initial capital entity.

18 And if you walk back, I won't spend the time here
19 to the definition. It's a defined term.

10:17:05 20 THE COURT: Where are you reading from?

21 MR. ALTMAN: Page 10, 4.2(b)(ii). That
22 specifically authorizes, we say, Mr. Simpson to make a
23 capital call with respect to the investment entities because
24 there's no question that JJ Arch is the managing member of
25 the four companies that operate --

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1 THE COURT: That's if the company is required to
2 make a capital contribution to an investment entity.

3 MR. ALTMAN: And those decisions were all to be
4 made by Mr. Simpson as the managing member of JJ Arch, which
5 he had unfettered control.

6 THE COURT: And "required" you think means
7 something other than legally required. If he thinks it is a
8 good idea.

9 MR. ALTMAN: It is not more than a good idea. You
10:17:58 10 don't have money to pay debts, your Honor; or you can't pay
11 back loans and you need to refinance loans. It is required
12 in order to operate the business.

13 THE COURT: Well, each of these investment entities
14 had other investors; right?

15 MR. ALTMAN: No, no, no. This morning, this is
16 just Mr. Chassen and except for Mr. Peldman and may be a
17 perfect time to segue to discuss him in connection with
18 this.

19 There may have been one other thing I wanted to get
10:18:23 20 into. I can't remember it, so obviously not.

21 So here's the problem with maintaining the status
22 quo and not allowing any efforts to refinance or market the
23 properties.

24 Mr. Simpson and Mr. Peldman have been in regular
25 dialog in a concerted effort to refinance the 88th Street

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1 property. Mr. Chassen has made clear he's not
2 participating. He's refused to give his consent. We've
3 attached the exhibits that I'm sure you've seen where he
4 delayed and foot dragged, and it's urgent. Mr. Peldman
5 rightly said please help us. Here's an independent party.
6 He's got real money in the game.

7 We are actively working with Mr. Peldman and his
8 counsel to work out an arrangement to refinance the
9 property; and if that's not successful, to sell it.

10:19:19 10 THE COURT: But now you're getting into -- you're
11 saying that he should have consented and there's no basis
12 for him not consenting, and maybe he's subject to a lawsuit
13 for not doing that.

14 MR. ALTMAN: I'm saying something more. I'm saying
15 that if you grant the relief that he's seeking, it will
16 block that valid legitimate appropriate --

17 THE COURT: The relief doesn't block anything other
18 than Mr. Simpson proceeding unilaterally. Mr. Chassen has
19 fiduciary duties of his own probably to these investors, and
10:20:04 20 whoever proceeds and either does or doesn't consent to JJ
21 Arch doing things does so at their own peril.

22 MR. ALTMAN: Yes, I agree completely.

23 THE COURT: But you're saying -- what you're saying
24 is that the Court should say, Well, forget about the consent
25 rights because those are stupidly being not exercised and I

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1 should let despite what the contract says, let Mr. Simpson
2 just do it without regard to the consent and where do I get
3 the power to do that?

4 MR. ALTMAN: I've already passed over that. I've
5 given you the reasons, foreclosure, resignation; but I'm not
6 talking about that now. Now I'm moving to a next place and
7 I'm saying the requested TRO is too broad and it will
8 effectively preclude Mr. Peldman and Mr. Simpson from
9 refinancing the property.

10:20:53 10 THE COURT: I agree the way it's written does not
11 bind itself to the scope of the consent rights, which is one
12 problem I have with it.

13 MR. ALTMAN: That's all we want, Judge. We want to
14 live under the contract. I do say first he has no rights.
15 He's been terminated. He's been foreclosed upon. He's been
16 resigned. We can do --

17 THE COURT: Let me move on. So, it also asks about
18 preventing him from making distributions to himself. And,
19 again, what I would at least think about adding at least
10:21:32 20 conceptually in my mind is not making distributions to
21 himself in a way that would contravene Article 5 of the
22 Operating Agreement because the Operating Agreement talks
23 about distributions and how they get done.

24 And I don't know exactly -- I've had a lot of small
25 companies where they come in and there's kind of like the

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1 law of this company where, well, I take a distribution here
2 and I pay for this. That's all out the window when you're
3 here. Now it's the law of the State of New York and the law
4 of this contract.

5 So, as I read it, anyway, there are regulations in
6 the contract about how distributions will work and when they
7 will occur and you first look at capital accounts. So, if
8 Mr. Simpson can establish that the capital accounts permit a
9 distribution first to him because he's owed the money,
10 that's the way the contract works.

10:22:30

11 After that, every distribution has to be pro rata;
12 right?

13 MR. ALTMAN: Agree a thousand percent. As I
14 started and I'll maintain, we will live by the contract.
15 Here's where --

16 THE COURT: And is right now -- I've sort of
17 generally described the process here, but is the rationale
18 for any distributions that Mr. Simpson might take that he is
19 entitled to preferential distributions under Article 5 of
20 the -- yeah, because it says in terms of distributions they
21 go first to the members in proportion to their respective
22 capital contributions until their respective unreturned
23 capital contributions have been reduced to zero.

10:23:10

24 Is that the rationale for any distributions you
25 want to make unilaterally?

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1 MR. ALTMAN: Yes, your Honor, and the amounts in
2 the capital accounts are not a creation of Mr. Simpson.
3 It's a creation of Mr. Chassen. It's in fact the -- I
4 thought I would be able to avoid that -- it was based on a
5 schedule of the respective capital accounts prepared by
6 Mr. Chassen. The numbers are not disputable.

7 So, yes, we're entitled to that, but there's more.
8 That's sort of a dayenu.

9 But here's the last piece of it. Not only is Mr.
10 Simpson entitled to those monies, Mr. Chassen has admitted
11 in his papers that contrary, in direct contravention of the
12 Operating Agreement and your orders, he's taken money
13 himself and highjacked it from Head of Pond. Not only has
14 he interfered with "I want Airbnb it," even though he has no
15 right to do under the Agreement.

16 THE COURT: Look, I don't know if I have them all.
17 I have the Operating Agreements and I have been operating
18 under the -- and focussing on the Operating Agreements for
19 JJ Arch. I recognize that there are sub-agreements at the
20 investment entity levels.

21 MR. ALTMAN: They're all the same.

22 THE COURT: So, I don't know what those really are.

23 And, I get it, that in the ordinary course of
24 business, people have kind of paid themselves periodically
25 without following the niceties of Article 5. That's over.

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1 MR. ALTMAN: Right, and that should be --

2 THE COURT: Unless you have a salary, like an
3 employment agreement or something like that.

4 MR. ALTMAN: Mr. Chassen has none, and under the
5 JJ Arch Operating Agreement he's not entitled to take any
6 money and he's been taking money.

7 THE COURT: The next two -- I want to make sure I
8 get through my list of things I have to decide on this
9 motion.

10:25:38 10 MR. ALTMAN: Sure.

11 THE COURT: The next one is talking about using JJ
12 Arch funds to pay counsel to represent him in a personal
13 capacity or to pay JJ Arch's counsel funds. So, you're
14 saying no funds -- they seem to believe that JJ Arch funds
15 are being used to pay Mr. Simpson's counsel.

16 MR. ALTMAN: Not since I've been in the case.

17 THE COURT: So, you're being paid directly by
18 Mr. Simpson personally?

19 MR. ALTMAN: Who is paying my fees I don't think
10:26:15 20 need be matter of public record; but I represent to the
21 Court without question, unconditionally, I have not been
22 paid not one penny, not sui marquis (phonetic) -- as we
23 learned in law school -- from JJ Arch period or any of the
24 non-Arch entities owned by JJ Arch.

25 THE COURT: Well, I guess, then there's no harm in
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1 being an injunction against it because, look, conceptually
2 you can't use company funds to pay personal counsel. That's
3 just -- there's no rationale for that. So, if he hasn't
4 done it and not planning on --

5 MR. ALTMAN: Until this issue of the alleged
6 conflict between the dominant principal of JJ Arch and
7 whether or not it is appropriate for me to continue to
8 represent JJ Arch.

9 THE COURT: Well, that's a real issue. I mean, I
10:27:12 10 don't know that it is a TRO issue right now, but the next
11 thing is the vehicle. We talked about that already.

12 Then there's something about HPR LLC where they
13 want Simpson not to interfere. Is that one of the entities
14 that's under this August 1 Agreement?

15 MR. ALTMAN: That's Head of Pond. All the entities
16 are part of the August 1 Agreement. Head of pond, 222 Head
17 of Pond Road is a piece of real estate in the Hamptons --
18 not too far from where I live -- that's owned by this
19 property. That's the entity. That's the property that
10:27:59 20 Mr. Chassen in direct violation of the Operating Agreement
21 has been operating as an Airbnb and keeping the money for
22 himself.

23 THE COURT: And what about the online viewing
24 access to bank accounts? You're saying -- they say that
25 they're still not getting it.

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1 MR. ALTMAN: We're not --

2 THE COURT: There's a new account they reference in
3 their papers they didn't know about until recently.

4 MR. ALTMAN: And I put an affidavit -- I think it
5 is the last exhibit in my papers that I filed yesterday
6 afternoon, is an e-mail from Mr. Simpson to the banker at
7 that bank very specifically instructing the bank to give him
8 online access. Whether or not the bank is or is not, we
9 don't know. If there's anything more that we need to do to
10 assist in allowing that to happen if it's is not happening,
11 of course we'll do it, Judge.

10:28:48

12 THE COURT: And the last thing, I'm not even sure
13 whether I'm reading from the right list anymore, but books
14 and records.

15 MR. ALTMAN: If this is a -- I don't want to give
16 it an adjective.

17 Mr. Chassen has full access to all books and
18 records and always has. What Mr. Schwartz's papers refer
19 to is a standard form books and records request that was
20 made under the BCL to predecessor counsel when he was in the
21 case and to which it was responded, "You have everything."

10:29:20

22 That's certainly not the basis for -- if he could
23 identify particular. And here's another one where it's
24 curious because you want to stand it on its head.

25 THE COURT: All right, look, I need to move on to

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1 the next motion.

2 I'm going to grant this in part and very carefully
3 here. I think the TRO is too broad, but I think there are
4 elements of it that I think do make sense.

5 Again, my principle here is it sounds like to me
6 there are real disputes with this August 1 Agreement. There
7 are real disputes as to certain conduct that Simpson alleges
8 against Chassen that may or may not impact ultimately
9 Chassen's interests in JJ Arch.

10:30:26 10 I don't think the issues under either of those are
11 sufficiently clear or ripe for me to start throwing
12 injunction thunderbolts around based on either side's view
13 at this point.

14 What I do think is clear and remains clear is that
15 there is an Operating Agreement that is supposed to govern
16 and does govern JJ Arch subject only to some modifications
17 and clarifications in various orders during this case
18 because of the sort of extraordinary events that occurred;
19 but my touchstone in all the orders has been wherever I can
10:31:08 20 is to stick very carefully to the Operating Agreement unless
21 and until we get to a point of deciding that someone has
22 breached it to the point that they lose those rights.

23 And so given that, I will enter an order pending
24 the hearing on the motion for a preliminary injunction and
25 temporary receiver that Simpson shall not sell or transfer

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1 assets subject to the JJ Arch Operating Agreement -- I'm
2 sorry -- shall not sell or transfer JJ Arch assets or assets
3 in the investment companies without Chassen's written
4 consent under Section 3.2 of the Operating Agreement, which
5 consent shall not be unreasonably withheld.

6 So, that's the basic provision of the amended
7 Operating Agreement, which in exchange for changing the
8 succession under the Operating Agreement to Mr. Chassen
9 gives Mr. Chassen very broad consent rights, and they do
10:32:27 10 clearly cover the sale of any asset of the company or any
11 portion thereof, and the definition also includes the fact
12 that: "Any action or decision that would constitute a
13 company major decision if made or taken by the company shall
14 be a company major decision if made or taken by any
15 Investment Entity."

16 So, it covers the subentities through this.

17 And I'll write this out so that it is a little more
18 clearer, but the restriction that plaintiff seeks is going
19 to be circumscribed by, essentially, Simpson cannot sell
10:33:23 20 assets of the company or investment entities or transfer or
21 encumber them if they are subject to as a major decision
22 under 3.2 without Chassen's consent, which consent shall not
23 be unreasonably withheld.

24 Second, Simpson shall not make distributions to
25 himself from JJ Arch accounts and funds in any way that

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1 contravenes Article 5 of the JJ Arch Operating Agreement as
2 amended.

3 Simpson may not use JJ Arch funds or other money
4 drawn directly from JJ Arch accounts to make payments to
5 counsel representing him in a personal capacity.

6 I will add Simpson shall continue to provide
7 Chassen with online viewing access of the bank accounts of
8 JJ Arch and all JJ Arch controlled entities. That may be
9 belts and suspenders; but just so that there is no doubt, if
10:34:51 10 it's not happening, it should be.

11 And, finally, Simpson shall continue to provide if
12 he hasn't already Chassen with the JJ Arch and JJ Arch
13 controlled entities books and records under the process of
14 Article 6 of the JJ Arch Operating Agreement.

15 The remainder of the TRO is denied. We have to set
16 a schedule for the PI hearing.

17 Eric, do we have a time in mind for when we might
18 be able to hear these guys? The parties can prepare a
19 briefing schedule, but we need to figure out when we can see
10:35:50 20 them. We have a very busy trial schedule at the moment.
21 So, we'll work on that for the time being, but I do want
22 full briefing on the receivership motion and the preliminary
23 injunction and all of that; and we'll be thinking about when
24 we can hear you and then we can work backward for the
25 briefing schedule.

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1 So, what we're going to do is I have another
2 hearing coming in at roughly 11, which I'll push a little
3 bit; and while that's going on, you can meet with
4 Mr. Scarlet to agree on a schedule for briefing and we'll
5 find a hearing date.

6 If you want that hearing to have witnesses, if you
7 want it to be an evidentiary hearing, we're going to need to
8 know that because that will affect how much time we -- how
9 much time we devote to it.

10:36:47 10 MR. SCHWARTZ: Okay, your Honor.

11 MR. ALTMAN: I have a question about a
12 clarification with respect to your intended order.

13 As I would like to understand the order, that it
14 does not preclude, for example, Mr. Simpson and Mr. Peldman
15 to continue to attempt to secure refinancing.

16 THE COURT: It absolutely does not interfere with
17 that.

18 MR. ALTMAN: Okay.

19 THE COURT: My only point is, though, that --

10:37:15 20 MR. ALTMAN: If we're actually going to sell it,
21 we have to present it, get his consent in writing and then
22 come back to you if he --

23 THE COURT: We're done with this, okay? We have to
24 move on to the next motion. I'm willing to if you want to
25 propose language for the TRO that may provide some guidance.

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1 Nothing should stand in the way of you all doing the right
2 thing for Mr. Miller's client back there. If you needed
3 anymore urging from me, if one or both parties are somehow
4 using this personal grudge to the disadvantage of third
5 parties, that's going to be an incredibly dumb thing to do.

6 And I don't know if it is going to be in front of
7 me or not, but any denial of consent in situations where it
8 is later viewed to be completely irrational and in harms of
9 third party, people better think that through very
10 carefully. I have no idea whether it's a smart thing to do
11 or not, that's not my job; but you all are real estate
12 professionals and I urge you not -- I was showing my law
13 clerk earlier the apocryphal story of Kilkenny Cat. I don't
14 know if you remember that story? The two cats that hate
15 each other so much that they tie their tails together, and
16 they fought endlessly until all that was left was fur. It's
17 an allegory or a simili for people who fight so viciously
18 that they kind of lose sight of the game, and they end up
19 destroying themselves in the process. Don't do that.

10:38:33 20 Let's move to the next motion, which was
21 Mr. Simpson's motion to make changes to my order with
22 respect to AREH, Arch Real Estate Holdings. This one does
23 not have a TRO component to it. It seeks two things.

24 It seeks to authorize Mr. Simpson to terminate
25 Mr. Chassen from JJ Arch, which is similar to what we were

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1 talking about before; and it also seeks to reinstate JJ Arch
2 as managing member of JJ Arch Real Estate Holdings with full
3 authority to do all sorts of things.

4 Essentially, it's a request to reconsider my
5 earlier order making Oak the managing member.

6 Now, this one, normally, I would just be having
7 this hearing to set a schedule. I got a request to
8 accelerate some sort of a hearing on this because the view
9 was that the pendency of this was the overhang of it was
10 causing harm.

10:40:39

11 So, I'll listen to that. My choices today given
12 that I've now received an opposition, the movant has filed a
13 brief, I could just decide the motion right here and now;
14 or I can request additional evidence in briefing or
15 something in between.

16 So, I don't have any TRO to consider, so go ahead.

17 MR. ALTMAN: Well, let me frame the issue this way,
18 your Honor.

19 THE COURT: So, we're going to have to -- again, I
20 have -- I'll give you another twenty minutes a side.

10:41:18

21 MR. ALTMAN: I'd like to think -- again, I'll try
22 to. I think in my mind I can do it faster, but we'll see.

23 THE COURT: I'll probably interrupt you less this
24 time.

25 MR. ALTMAN: The application that's being sought

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1 now by Oak is for the ultimate relief in this case
2 effectively --

3 THE COURT: I'm sorry, the application by who?

4 MR. ALTMAN: By Oak.

5 THE COURT: What application have they made?

6 MR. ALTMAN: They are asking you to decide our
7 motion to vacate your prior order effectively giving them
8 sole control and wiping out completely Mr. Simpson's consent
9 rights under the AREH Operating Agreement.

10:42:10 10 THE COURT: Maybe I missed something. This is your
11 motion, right?

12 MR. ALTMAN: It is, it is. But make no mistake,
13 this motion is a request by Oak to confirm an agreement --
14 an order from you which takes away completely any right by
15 Mr. Simpson to consent to the sale or any --

16 THE COURT: Well, the status quo, that's what it is
17 now.

18 MR. ALTMAN: Well, no, it is really not. What your
19 order did was a little more than, and Oak giving them credit
10:42:48 20 didn't push on it too hard because the concern is right
21 here.

22 The way your November 10th order -- 10th, I may
23 have the date wrong -- says is that preserve the status quo;
24 but maintain the consent rights of JJ Arch, and the JJ Arch
25 consent rights can be granted by either Mr. Simpson or

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1 Mr. Chassen.

2 THE COURT: And what you want in your motion -- at
3 least as I see your pathway -- is by the part of your motion
4 that seeks to terminate Mr. Chassen again is that that will
5 effectively give Mr. Simpson the sole consent rights under
6 my prior order.

7 MR. ALTMAN: In a sense that's one way to put it,
8 but I'd like to go back to my original theme was we would
9 like you to enforce the Operating Agreement as written, and
10 I submit to you that the Architect Real Estate Holdings
11 Operating Agreement when originally formed had the
12 80 percent operating member is JJ Arch of which Mr. Simpson
13 is the managing member. He controlled that 80 percent
14 interest. The investment member, Oak, owned 10 percent.
15 All the decisions were being made by Mr. Simpson.

16 We've -- I'm not trying to reargue what finding you
17 made with respect to that. I know it is hard to hear
18 that --

19 THE COURT: Aren't you doing that?

20 MR. ALTMAN: Excuse me?

21 THE COURT: It is exactly what you're doing.

22 MR. ALTMAN: I'm really not intending that.

23 THE COURT: You just want me to change the result?

24 MR. ALTMAN: No. The one piece of it where you
25 went beyond what the Agreement provides.

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1 THE COURT: I didn't do it by accident. I
2 explained it very clearly why I was doing it.

3 MR. ALTMAN: And that's exactly what they want. If
4 rather than give me discovery and a hearing, which is what I
5 made pretty clear when I was here last time that's what we
6 want. This is a big issue, a lot involved, a lot at stake.
7 It can't be decided summarily on the papers. At that point
8 Oak had just put in some reply papers, which I hadn't had a
9 chance to see, this is sort of the same thing again.

10:44:54 10 I don't have an opportunity of what's been
11 presented to you today, I cannot cross-examine an affidavit
12 by Mr. Wiener which I got yesterday at noon, absolutely
13 incapable. I wouldn't even pretend to do it, not in a
14 million years.

15 I've also been deprived of any discovery with
16 respect to anything on this issue. I served discovery
17 requests as soon as we came in in an effort to intending
18 that we would be making this motion that it would be decided
19 in the ordinary course.

10:45:20 20 Now, I understand --

21 THE COURT: Have you been rebuffed on discovery?
22 Why haven't I heard that?

23 MR. ALTMAN: Because I've been gentlemanly and
24 counsel -- we set a schedule let's not do it right now, it's
25 the holidays. We'll do it at the end of January, first days

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1 in February, let's do the parties first.

2 I'm a busy practitioner as well and counsel at
3 Haynes and Boone asked for this request, and I gave it to
4 them. To date, they asked for an extension of time until --
5 I think it's this week or next week to respond to my
6 discovery requests. I haven't gotten anything yet.

7 So, it's not surprising to me. I mean, it's nice
8 litigation gambit what they're trying to do. Have the issue
9 that we crystallized that we said because you really,
10:46:07 10 really, Judge, if you allow the Oak to make business
11 decisions and sell or refinance the AREH properties without
12 Mr. Simpson's consent, that I believe is not permitted, not
13 conceived in connection with this.

14 THE COURT: I mean, there is an appellate court;
15 right?

16 MR. ALTMAN: Oh, that's where I'm going, Judge. I
17 mean, I'll jump forward to it. If today or soon you're
18 going to grant that relief, I'm going to ask you to stay the
19 order, and I'm going to go to the First Department.

10:46:43 20 THE COURT: Counselor, I already have granted that
21 relief in November.

22 MR. ALTMAN: They haven't acted on it. They still
23 have not done anything. Here's the other problem. As
24 aggressive a litigator and arguer as I am, I'm really a
25 practicing settler. What should be happening is Oak should

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1 be sharing with Mr. Simpson the proposed transactions and
2 the things that they're working on and solicit his input so
3 that he may be involved in it.

4 If that were happening, we may not be -- we
5 probably would, but we may not be here, certainly not to
6 that extent. We haven't gotten any of that.

7 Investor calls have been had. They have attempted
8 to block him from it. There's been no cooperation
9 whatsoever because they got this one step up in a
10 preliminary application where they got an order from you
11 that says, well, looks like we can kind of do whatever we
12 want and sell all these properties or refinance them without
13 Mr. Simpson's consent.

14 The motion that we made -- and I didn't ask for
15 temporary relief saying don't do it. I want them to
16 continue doing whatever they do. But, ultimately, if the
17 information that we've presented from Ms. Las and other
18 investors, what the parties specifically told Mr. Simpson
19 that what we want to do is get out and our primary purpose
20 is to relieve our personal guaranties.

21 If what Oak is doing is even handed, we have no
22 objection; but we have no way of knowing that because they
23 totally blocked them out and I haven't been provided any
24 discovery. And if you do that today, that's where the case
25 is going. I'll ask you to stay it. You'll either grant it

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1 or deny it. I'll go to First Department. They'll grant it
2 or deny it. I would like for that not to happen.

3 THE COURT: Well, the changing of roles of making
4 Oak managing member and the switch, it has a contractual
5 basis to it; and it was, in my view, justified by what I
6 consider overwhelming evidence of just some outrageous
7 conduct.

8 MR. ALTMAN: I understand that.

9 THE COURT: And, so, I don't want to go through all
10 of that again; but that record to me was overwhelming in
11 favor of doing it that way. And to be quite honest, and I
12 get it, you haven't cross-examined the affidavits and
13 neither have I heard any cross-examination of it; but the
14 story I hear from Oak in their affidavits and in their plans
15 is a sort of a cohesive cogent plan and, frankly, what I
16 hear and see from the Simpson side is not.

17 Now, I haven't heard anything to suggest that their
18 plan of outsourcing and not having as many employees and
19 having it be done by professionals, that's the kind of sort
20 of rational plan at least I envisioned when I made that
21 order to begin with. Because, let's face it, this place was
22 spinning out of control and into the ground.

23 MR. ALTMAN: For lack of funding and, yes, I agree
24 with you. Although, it's the first I have heard of
25 outsourcing to replace employees was in the papers that I

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1 read yesterday afternoon. First time I ever heard of it.

2 We've gotten no information whatsoever, no information with
3 the real issue, the one I'd like to focus --

4 THE COURT: I don't know if this is what you're
5 seeking, also. I don't recall making any order that -- you
6 know, JJ Arch is still a member of AREH, and they should be
7 entitled to the same kind of information that any member
8 would be entitled to.

9 MR. ALTMAN: We agree. The problem here is this
10:50:34 10 side fight that Oak is controlling between Mr. Simpson and
11 Mr. Chassen because Mr. Chassen knows everything because
12 he's on salary at Oak now. We've got some claims against
13 them about that, but the projector of this entire investment
14 vehicle has been given no information whatsoever with
15 respect to the proposed transactions for all of the entities
16 that he put together, that he brought, 125 investors with
17 over \$110 million of investment money.

18 THE COURT: Candidly, that's from my perspective
19 his own fault because of how --

10:51:14 20 MR. ALTMAN: Not getting information now.

21 THE COURT: No, not that. Look, I don't really
22 throw around orders like that in cases very often. It's the
23 last thing I want to do is get involved in this, but the --
24 the animus that I observed was clearly hurting the entity
25 and all the other third parties that depend on the entity;

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1 and it got to the point where it was so dysfunctional that I
2 didn't feel like there was any other choice and I didn't see
3 anything in the papers I've read in connection with this
4 motion which causes me to even for a moment change my mind
5 on that.

6 So, again, if you want to appeal that, that's fine;
7 but I don't see any reason to what is effectively asking me
8 to just change my mind on that decision at this point. But
9 I don't recall seeing anything in that decision that
10 deprived Mr. Simpson or anyone at JJ Arch for information to
11 which they would be entitled, but not decision-making
12 authority. That order put him in the role that Oak was
13 supposed to be in before as a, you know, they're an
14 investor, he's an investor at this point and that's that.

15 So that part of this motion I'm not, frankly,
16 persuaded by.

17 The second part, which is the Chassen facing part,
18 I think that sounds like a real claim. I don't know a lot
19 about it at this point or enough about it to make any
20 decision on it other than to schedule it for whatever
21 hearing it is you want. But, I'm -- I guess maybe what
22 you're asking me for is you want an evidentiary hearing now
23 on the first part to essentially reconsider the order I made
24 in November that I based on the evidence that was in front
25 of me and I'm not inclined to do that.

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1 MR. ALTMAN: That's not what I'm asking for now.

2 Let me try to as best I can put a point on it.

3 If and to the extent you enter any order or
4 continue any order that allows Oak to sell, dispose,
5 refinance or do anything with respect to the investment
6 entities of AREH without Mr. Simpson's consent, I submit to
7 you it is contrary to the Arch Operating Agreement and we're
8 going to ask for an immediate stay and appeal afterwards.

9 I get how you got to where you got, but that's too
10 far.

10:54:14

11 THE COURT: Let me hear from the other side.

12 MS. THORNE: Thank you, your Honor. I'll try to
13 keep it very brief.

14 I did want to stress the emergency nature, why we
15 asked for a hearing right away; and that is because there
16 are a number of deals in process where the properties will
17 be foreclosed upon if they are not consummated. We have
18 consents from investors. We have worked out deals with
19 lenders. We're happy to discuss the details of any of those
20 if your Honor has concerns about that.

10:54:51

21 THE COURT: Is Chassen now an employee of Oak?

22 MS. THORNE: No, he is not. What we have here in
23 this motion and in Mr. Simpson's representations to lenders
24 that his consent is required is simply proof of why your
25 Honor entered the order in the first place. And part of the

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1 reason we believe that Simpson didn't choose to seek a TRO,
2 because he's accomplished what he wants by having the motion
3 on file because it's simply shown confusion and concern from
4 all the lenders about what order is on the table, what may
5 happen in a week.

6 And that's why we would respectfully request that
7 your Honor confirm your previous order and including the
8 fact that we do not need Mr. Simpson's consent for any major
9 decisions.

10:55:55 10 THE COURT: Well, you need either his or Chassen's.

11 MS. THORNE: Correct.

12 THE COURT: You need one of the JJ Arch members'
13 consents.

14 MS. THORNE: Yes. I did just want to correct the
15 record on a couple of things.

16 THE COURT: And, by the way, Mr. Chassen in making
17 those decisions is supposed to be exercising his fiduciary
18 duties to JJ Arch and the like. So, that's not supposed to
19 be just a proxy for Oak consenting to its own transactions.

10:56:27 20 MS. THORNE: We absolutely have no problem with
21 that. We have no reason to believe Mr. Chassen isn't doing
22 that. We have been providing all of the information to him
23 -- although, word on that with respect to Mr. Simpson as
24 well -- for him to independently assess and determine --

25 THE COURT: I'm sorry, did you say you are also

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1 providing same information to Mr. Simpson?

2 MS. THORNE: I don't know if it is the same
3 information, but I do take issue with the fact that
4 Mr. Simpson says he is not being kept in the loop. He
5 certainly is.

6 If you look at his own exhibits that were filed in
7 connection with his motion, they are replete with
8 discussions about the deal terms, discussions about the
9 lease of -- at 88 University. You see e-mails from
10 Mr. Wiener saying, "I wanted to keep you in the loop on
11 everything that's happening."

12 So, I would, you know --

13 THE COURT: What would be the reason not to give
14 him the same information that Chassen is given?

15 MS. THORNE: Well, I will say because I do want to
16 repeat, I don't know exactly if it's a mirror image of
17 what's being provided; but I will say absolutely there would
18 be a reason.

19 I mean Mr. Simpson has done nothing but try to end
20 these deals, misrepresenting facts to lenders so that he can
21 stand in the way of them happening despite the fact that
22 they are quite obviously in the best interest of investors,
23 and we have never done anything to keep any information away
24 from him. There are obviously conversations that are had
25 with Mr. Chassen that Mr. Simpson is not on the phone. He

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1 has been on every single investor call.

2 And that's my only reluctance saying there may not
3 be a perfect mirror of information, but I can commit to your
4 Honor that Oak has provided him with information on the
5 deals as is evident from even what he has submitted to this
6 Court.

7 THE COURT: Sufficient information that he can
8 determine whether to exercise his consent right?

9 MS. THORNE: Absolutely, he has been involved in --

10:58:28 10 THE COURT: So, all material information about
11 these transactions?

12 MS. THORNE: All material information about the
13 transactions. He's been on phone calls with the lenders
14 himself. He's had his own discussion with them apart from
15 us. He's had discussion with other investors who are
16 spearheading those negotiations. There is no hiding the
17 ball here.

18 THE COURT: Just so we're clear, I'm trying to get
19 my bearings on this again. That's not the kind of
10:59:01 20 involvement that he's necessarily entitled to.

21 MS. THORNE: Correct.

22 THE COURT: Because Oak is the managing member
23 under my aware anyway and makes the managerial decisions.
24 JJ Arch is now the -- essentially the investor member and is
25 entitled to some information, but is not entitled to be

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1 making the decisions or being on the phone with lenders or
2 getting involved and certainly not in interfering with Oak's
3 job as managing member. So, I'm not sort of nodding along
4 to all this saying that that's something he's entitled to
5 do. He's entitled to the kind of information that investor
6 member should get.

7 So, it is a narrower kind of thing, and I don't
8 want to be misunderstood as saying that, well, you know,
9 because JJ Arch used to be the managing member, they should
10:59:59 10 still get that kind of access. That's not the way I
11 intended this order to work. This was a switching of sides.
12 Frankly, the agreement does provide for that under certain
13 circumstances where there is cause; and the record is I
14 think clear in the last motion, there was cause to do that.

15 MS. THORNE: And I appreciate that, your Honor.
16 And I'll just tell you from a practical perspective, the
17 reason that Oak has provided more information than it has to
18 is because, ideally, everyone we get on board with these and
19 we could all have a kumbaya moment and get some deals done.

11:00:39 20 So, Oak is not in a situation where they're trying
21 to cut him out. Ideally, we would all just agree on these
22 things as we should, as everyone else is agreeing. But,
23 instead, what has happened is what I think exactly what your
24 Honor feared would happen which is an unbelievable amount of
25 interference and, frankly, using this Court to try to sell

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1 doubt amongst lenders about whose consent is required for
2 deals to go through.

3 THE COURT: Well, there should be no -- I don't
4 understand what the uncertainty is. There's an order which
5 I hope it's clear. This is a motion, although not styled
6 this way, asking me to reconsider it and I'm not going to
7 based on what I've seen.

8 MS. THORNE: All right. Well, thank you very much,
9 your Honor.

11:01:33 10 THE COURT: There is a part of the order, though,
11 that also asks for relief against Mr. Chassen.

12 MR. SCHWARTZ: Yes, can I address that --

13 THE COURT: Before I let Oak's counsel sit down, I
14 do understand because it's a clever potentially move here
15 that this is a potential side door around an overt asking me
16 to change the order. If the other part of the order which
17 seeks to jettison Mr. Chassen from JJ Arch were it to be
18 granted, I went back and looked at my other order and the
19 consent rights were to be exercised by either of JJ Arch's
11:02:13 20 members, Mr. Chassen or Mr. Simpson.

21 So the second one, trojan horse, if you will, is if
22 I do that, if I say, Well, you know, based on this
23 August 1st thing or something that happened in September,
24 Chassen's out; that probably has the effect of changing the
25 text of my earlier order or at least it could unless I

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1 change it along with it.

2 MS. THORNE: And, your Honor, that's exactly what
3 we're worried about because what we need to finalize --

4 THE COURT: To be honest with you, I'm prepared
5 based on the papers I have already to deny the branch of
6 this that relates to changing my prior order. I'm not
7 prepared to just wipe away without some additional process
8 to get rid of a new argument about "terminating"

9 Mr. Chassen based on, frankly, a record that's a little
10 murky to me.
11:03:18

11 MS. THORNE: And I'll let Mr. Schwartz address part
12 of that; but I would argue, your Honor, that when you
13 entered the PI, it was based on our mountain of evidence
14 related to cause events under the --

15 THE COURT: And the cause changes -- just the way
16 that contract, works, right -- it's cause to remove the
17 managing member; and when that as I recall the language, it
18 basically you switch positions and they become an investor
19 member with consent rights.

11:03:55 20 MR. THORNE: That's correct. But one thing I would
21 note is that under the JJ Arch Agreement, cause events for
22 removal plaintiff of Mr. Simpson are supported by the cause
23 events under Arch. And I know we're not deciding that
24 today.

25 THE COURT: Well, that's a motion that's not even

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1 in front of me. It's a removal of Mr. Simpson at JJ Arch.
2 Right now the only thing -- well, it depends on what month
3 it is because I usually have a motion to remove one or both
4 of them at any particular time in my docket. This time the
5 one that I have is the motion to remove Chassen.

6 MR. THORNE: Right. And I would note, though, that
7 there should not be any scenario regardless of what happens
8 there where Mr. Simpson somehow recovers those consent
9 rights through the back door or otherwise given that those
10 cause events flow through to the JJ Arch.

11:04:50

11 THE COURT: Well, I'm pointing out that I recognize
12 the possible play that they are putting in motion here; and
13 I would have to consider in granting that whether as a
14 consequence of that I would have to modify my order which
15 the earlier, the November order which was specifically
16 predicated on there being two JJ Arch members; so I would at
17 that point reconsider how to -- how, if at all, to change
18 that order.

19 But, that's the next step in this because the
20 battle within JJ Arch doesn't directly involve Oak; but it
21 does through this mechanism that I just described. But
22 there are allegations of financial chicanery at JJ Arch that
23 Oak may not even know about and probably doesn't care about
24 unless it affects its own interests and shouldn't really;
25 but I just want to make sure you are seeing the same thing I

11:05:37

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1 am which is that although the second part of this motion
2 which I'm not denying out of hand today and I'll set for an
3 argument and probably an evidentiary hearing, you'll want to
4 be there because you'll want to at least argue for
5 protecting Oak's rights to the extent that JJ Arch's
6 membership changes.

7 MR. SCHWARTZ: Your Honor --

8 THE COURT: Quick one, because I do have a group of
9 people waiting to come next. I have may ask if any of them
10 want to be the receiver at some point during this.

11:06:43

11 MR. SCHWARTZ: Your Honor, it is our position that
12 the Court should -- we fully briefed, we put in opposition
13 within the timeframe that the Court asked. We put in an
14 affidavit. We put in a memorandum of law. We addressed --

15 THE COURT: Mr. Altman asked me if I would have an
16 evidentiary hearing on his motion; and my general rule,
17 although a lot of preliminary injunction hearings are
18 settled on affidavits, if the parties want an evidentiary
19 hearing I'm usually amenable to providing that because
20 affidavits aren't that useful, frankly, especially with you
21 two guys. I mean, not you two lawyers, but when I -- these
22 two people are diametrically opposed on almost anything. I
23 don't get a lot of comfort just from hearing the dueling
24 affidavits between these two individuals, candidly, I
25 don't.

11:07:21

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1 MR. SCHWARTZ: Your Honor, I understand that, but
2 we have -- these are ultimate issues. In our amended
3 counterclaims we're seeking Mr. Simpson's removal from
4 JJ Arch. We will -- if your Honor is intending to not deny
5 the motion today, we're going to obviously move, ourselves,
6 to terminate Mr. Simpson. Clearly, there will be dueling
7 motions on this issue before your Honor.

8 Ultimately, these are ultimate issues that go to
9 the core of the case and so it's, I think -- I think your
10 Honor's order that basically --

11:08:15

11 THE COURT: That's actually a good point. So, is
12 the motion -- I think what they're seeking is sort of
13 permission to terminate.

14 Probably in one of my earlier orders I said enough
15 with these unilateral terminations. None of these are going
16 to be effective unless there's an order from the court along
17 with it. But you're right, that is -- a decision on whether
18 there are grounds to terminate one or the other is what
19 lawsuits are about. The only thing that I really could
20 grant is some temporary change in status pending the
21 remaining remainder of the case. But, yeah, if you want to
22 have a reciprocal motion on for the same thing, I suppose
23 you can.

11:08:54

24 MR. SCHWARTZ: I mean, we certainly will do that,
25 your Honor. But I think, also, if your Honor looks at the

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1 bases that are raised in this motion as they pertain to Mr.
2 Chassen, they are so -- they're so limited in what they
3 allege and basically comes down to --

4 THE COURT: I, candidly, don't agree with that.
5 Applying a somewhat of a motion to dismiss kind of standard
6 if I accept as true all of the things that they're alleging
7 that Mr. Chassen did, it may not be accurate; but if it is
8 accurate, it doesn't seem frivolous to me.

9 MR. SCHWARTZ: Your Honor, if you look at the
10 e-mails with respect to the 89th Street property; for
11 example, there is no evidence that Mr. Chassen did not
12 consent. Mr. Chassen is a named defendant in the
13 foreclosure action as a guarantor and he's liable for any
14 deficiency judgment. Mr. Chassen did respond to Mr. Peldman
15 on January 3rd.

16 THE COURT: So, you're saying that he unequivocally
17 consented to --

18 MR. SCHWARTZ: Correct, correct, and there was --
19 Mr. Simpson attaches an e-mail just from I believe it was
20 January 8th where they attached -- where the e-mail has a
21 proposed agreement with the lender that says it is subject
22 to further review from counsel.

23 THE COURT: Put this aside for a second. Are you
24 representing in court right now that he consents to that
25 going forward?

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1 MR. SCHWARTZ: He has consented, he consented to
2 the refinancing this property. He is going to be liable for
3 any deficiency judgment on this loan.

4 THE COURT: Well, I suggest that because for
5 whatever reason, I have two lawyers standing in front of me
6 who have every reason to want to move forward with that
7 transaction who don't think they have the consent. I would
8 suggest whatever form that they consider necessary to
9 memorialize that consent, your client even if he thinks he's
10 already done it, confirms it quickly.

11:11:11

11 MR. SCHWARTZ: He confirms it in e-mail -mail that
12 we attached.

13 THE COURT: Forget e-mails. Let's forget
14 everything that -- whatever else has happened, I have two
15 folks who don't think it happened. So, I would suggest that
16 the three lawyers when we're done here which is going to be
17 extremely soon, get together and find an appropriate way of
18 documenting this consent so that at least this sub-issue can
19 move on, okay?

11:11:43

20 MR. SCHWARTZ: Certainly, your Honor. There's
21 no -- we'll do that after, your Honor.

22 But I'd just also like to point out, your Honor,
23 that in the January 9th e-mail where this proposal was
24 attached subject to further review by counsel, Mr. Simpson,
25 again, tells Mr. Chassen, "Jared, please be advised that I

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1 am the sole managing member of JJ Arch and you have no
2 ability to do anything without my explicit approval."

3 Again, at NYSCEF number 594. This continues --

4 THE COURT: At some level there's nothing incorrect
5 about that sentence.

6 MR. SCHWARTZ: While he's asking Mr. Chassen to
7 consent, he's always saying, nothing you can do. You have
8 no rights at all. Everything --

9 THE COURT: Well, that part would be wrong.

11:12:29 10 MR. SCHWARTZ: Okay.

11 THE COURT: Look, this isn't that hard, right? I
12 mean, I understand that these guys couldn't agree on the day
13 of the week, but the contract puts them in the cats tied
14 with their tails together.

15 Simpson is in charge, but there's an enormous
16 carveout for what's called major decisions; but to my
17 reading, a lot of those are broader definition of major
18 decisions than you see in a lot of agreements, but that's
19 what they agreed to. So, they're locked together, tied
11:13:10 20 together, sometimes the cats in the telling of the story in
21 a bag tied together, don't let them eat each other because
22 it's not going to work out very well.

23 MR. SCHWARTZ: Absolutely, absolutely, your Honor;
24 but if I could just make one other point, your Honor.

25 There's no evidence -- Mr. Simpson presented no

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1 evidence, your Honor, of a request that was -- that
2 Mr. Chassen refused. Under the JJ Arch Operating Agreement,
3 if Mr. Chassen ignores a request, he automatically is deemed
4 a consent. So, there is not any evidence that there's been
5 affirmative refusal --

6 THE COURT: I guess that's your position.

7 Mr. Altman wrote I thought some persuasive papers that
8 sounded fairly reasonable in the other direction that, you
9 know -- look, the fact that I have come out on numerous
10 occasions finding that Mr. Simpson's actions were
11 unreasonable doesn't mean that he's wrong on everything; and
12 there's some things that I read in there about the back and
13 forth which doesn't put your client in the best light
14 either.

15 So, I wouldn't get too over confident by the fact
16 that there's been a bit of a winning streak because I
17 haven't gotten to the bottom of these intra-JJ Arch disputes
18 yet, and I will.

19 MR. SCHWARTZ: Your Honor, we're certainly not over
20 confident about anything, your Honor; but I think -- I think
21 the upshot of everything here, your Honor, is JJ Arch is no
22 longer a managing member of AREH because of Mr. Simpson.
23 The misconduct of Mr. Simpson throughout this case and
24 previously is -- has been established to your Honor's
25 satisfaction sufficient to remove the company and cause JJ

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1 Arch tremendous damage.

2 So, I feel confident that when we make our
3 competing motion for his removal that it will be amply
4 supported.

5 THE COURT: You can make whatever motion you want.
6 You make a good point. Look, what I'm going to do on this
7 motion is I'm going to deny the branch relating to what I
8 consider a motion to reconsider my prior order and defer
9 ruling on the JJ Arch portion of the motion pending an
10 evidentiary hearing.

11:15:33

11 I'm going to leave you with Mr. Scarlet to talk
12 about the schedule while I talk to these next folks, but
13 that's my resolution of the two motions today.

14 I appreciate hearing from you all. It's been a
15 well-fought battle, so thank you very much and we'll see you
16 next time.

17 MR. ALTMAN: Thank you, your Honor.

18 Just with respect to in the order that you enter
19 make clear whether or not you're granting or denying my
20 request for a stay to the extent it permits Oak to go
21 forward --

11:16:02

22 THE COURT: Is there a request for a stay in the
23 motion?

24 MR. ALTMAN: No.

25 THE COURT: Well, if you're making -- I'm not going

Proceedings

1 to stay it -- I'm not going to stay the continuing --
2 there's already an order in place in November, which nobody
3 has asked me to stay. If what you're saying is now having
4 denied what I consider your request to renew that motion,
5 you want me now to go back and stay an order that I put in
6 place in November the answer is no, I'm not going to do
7 that.

8 MR. ALTMAN: That's all I need to know. Thank you.

9 THE COURT: All right, thanks, everyone.

11:16:43 10 MR. ALTMAN: Thank you.

11 MR. SCHWARTZ: Thank you.

12 * * * * *

13 (Certification on next page)

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C E R T I F I C A T I O N

INDEX NO. 158055/23 JEFFREY SIMPSON et al vs.
JARED CHASSEN et al CHASSEN

THIS IS HEREBY CERTIFIED TO BE A
TRUE AND CORRECT TRANSCRIPT.

Bonnie Piccirillo

BONNIE PICCIRILLO
OFFICIAL COURT REPORTER

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